

REMARKS

The comments of the Examiner as set forth in the office action of February 8, 2007 have been carefully studied and reviewed. In this response claims 1, 7, 16 and 19 have been amended, and new claims 26 through 34 have been added.

Claim 1 has been amended to address the concerns raised by the Patent Office on page 2 of the office action.

Claims 1-25 stand rejected as being anticipated by U.S. Patent No. 4,912,894 to Platt. For the reasons discussed below, it is respectfully urged that claims 1-25 are not anticipated by Platt.

The first step in an anticipation analysis is claim construction, and the second step involves comparing the properly construed claim to the prior art. *Helifix Ltd. v. Vlok-Lok, Ltd.*, 208 F.3d 1339 (Fed. Cir. 2000). In construing a claim term the Patent Office must give the claim term its plain and ordinary meaning unless the term has been specifically defined by the applicant, or the plain meaning is inconsistent with the specification. See MPEP §2111. This is the most fundamental cannon of claim construction. It is true that in giving a claim term its plain and ordinary meaning, the Examiner can give the claim term its broadest reasonable interpretation. *In re Baker Hughes, Inc.*, 215 F.3d 1297 (Fed. Cir. 2000). However, the broadest reasonable interpretation comes with a number of caveats. First, as set forth in MPEP §2111, the words of a claim must be given their plain and ordinary meaning unless such is inconsistent with the specification. In addition, the interpretation must be "reasonable" and must be consistent with the specification and in harmony with how a person of ordinary skill in the art would construe the term in light of the specification. *In re Hyatt*, 211 F.3d 1367 (Fed. Cir. 2000).

It is clear that there is a dispute between the Patent Office and the Applicant concerning the proper construction of two terms, "stud spacer" and "stud."

First, with respect to the claim term “stud spacer,” this is a term of art. It is commonly and extensively used in the construction industry, especially in light steel framing. The plain and ordinary meaning of “stud spacer” is the same meaning that it has as a term of art. The plain and ordinary meaning of “stud spacer” is:

a member used in a wall that is interconnected between successive studs and which spaces the studs, and in some cases, structurally reinforces the stud and the wall.

The Patent Office is referred to four exemplary U.S. patents: U.S. Patent No. 6,701,689; U.S. Patent No. 6,021,618; U.S. Patent No. 5,274,973; and U.S. Patent No. 4,625,415. All four patents use the term “stud spacer” as a term of art, and all four patents use the term “stud spacer” in its plain and ordinary sense to mean a member used in a wall that interconnects successive studs, and which spaces the studs and in some cases structurally reinforces the studs and the wall.

There is no evidence of record to suggest that this is not the plain and ordinary meaning of “stud spacer,” or that the term “stud spacer” has any other plain or ordinary meaning. The Patent Office has not explicitly construed this term. All that is known is that the Patent Office’s construction is so broad that it encompasses structures in a ceiling. If the Patent Office disagrees with Applicant’s construction, it is respectfully urged to set forth an explicit construction for the term “stud spacer” and to explain the basis for such construction.

As noted above, there is also a dispute as to the meaning of the term “stud.” The plain and ordinary meaning of “stud” is an upright post member in a wall for supporting drywall, wall boarding or similar material. The dictionary definition of “stud” is:

An upright post in the framework of a wall for supporting sheets of lathe, wall board, or similar material

Yahoo!Education, <http://education.yahoo.com/reference/dictionary/entry/stud> (Ex. A).

This plain and ordinary meaning of “stud” is consistent with the specification and is in harmony with how a person of ordinary skill in the art would construe the term. The Patent

Office has not explicitly construed this term either. Again, all that is known is that whatever the construction it is so broad that it encompasses horizontal structures in a ceiling. If the Patent Office disagrees with this construction, it is respectfully urged to set forth an explicit construction of "stud" and explain the basis for the construction.

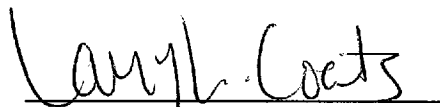
In the case of both a "stud spacer" and a "stud," these components are found in a wall. They are not components found in a ceiling structure as in Platt. Platt discloses a ceiling grid structure having cross tees interlocked to main beams. This structure functions to support ceiling tiles on flanges formed on the cross tees and the main beams. There is no structure in Platt that can reasonably be deemed a stud or a stud spacer.

Anticipation requires that Platt disclose each and every element and limitation of the claim. Since Platt does not disclose a stud spacer, nor a stud, it is impossible for Platt to anticipate the claims.

For the foregoing reasons, it is respectfully urged that the present application is in condition for allowance and allowance is respectfully requested.

Respectfully submitted,

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stud¹ (stŭd) [KEY](#)

NOUN:

1. An upright post in the framework of a wall for supporting sheets of lath, wallboard, or similar material.
2. A small knob, nail head, or rivet fixed in and slightly projecting from a surface.
3.
 - a. A small ornamental button mounted on a short post for insertion through an eyelet, as on a dress shirt.
 - b. A buttonlike earring mounted on a slender post, as of gold or steel, for wearing in a pierced earlobe.
4.
 - a. Any of various protruding pins or pegs in machinery, used mainly as a support or pivot.
 - b. One of a number of small metal cleats embedded in a snow tire to increase traction on slippery or snowy roads.
5. A metal crosspiece used as a brace in a link, as in a chain cable.

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- ☐ 1.6
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- ☐ 3.3
- ☐ 3.8

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diffident

Definition: (adjective)
hesitant in acting

Petersons.com

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TRANSITIVE VERB:**stud-ded , stud-ding , studs**

1. To provide with or construct with studs or a stud.
2. To set with studs or a stud: *stud a bracelet with rubies.*
3. To be scattered over: *Daisies studded the meadow.*

ETYMOLOGY:

Middle English *stode*, from Old English *studu*; see *stā-* in Indo-European roots

Thesaurus: synonyms for stud

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